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GENERAL COUNSEL'S OPINION NUMBER 57-3, DATED 21 OCTOBER 1957

When an Army officer detailed to the Agency is furnished quarters, he is not entitled to rental allowance and thus is not affected by the fact that certain other Army officers in the same area, who are given a rental allowance by the parent service in lieu of quarters, are alleged to benefit financially therefrom.

TO THE SSA-DD/S

1. The claimant, a detailed Army officer, was stationed overseas from August 1952 to August 1954 in an area where there were a number of U. S. Army officers serving under bona fide orders issued by the Department of the Army.

2. His Memorandum of Understanding provided that claimant would receive the normal salary and allowances of an officer of his grade on duty in Washington plus any additional allowances that would normally be paid to an officer on bona fide military duty in the overseas area in which he was to serve. There was an additional rental allowance paid by the Army in the area and this amount was included by reference in the Memorandum of Understanding. Claimant, however, when he arrived overseas was furnished quarters and accordingly his basic rental allowance and supplemental allowance were suspended. He states that due to the local rental situation including an order by the Commanding General placing a ceiling on rental payments, officers of his grade on duty with the parent service in the area were able to achieve a net gain each month due to the excess of rental allowance received over that paid out. He seeks reimbursement for this monthly amount for the 24 months covering his tour of duty. In support of the claim he cites an Agency regulation stating in part as follows:

"Military personnel attached or assigned . . . for duty shall retain all monetary rights and benefits which would accrue to them under like circumstances and conditions had they not been assigned."

3. The basic question involved is whether under the terms of the Memorandum of Understanding, and applicable regulations and decisions hereinafter referred to, this claim may be properly paid as a monetary right or benefit to which the officer is entitled or on any other basis.

4. The question of whether or not the claimed amount is a monetary right or benefit within the contemplation of the Memorandum of Understanding and the then effective regulations we feel need not be debated since there are overriding factors which point the way to a proper decision. It is admitted by claimant that he was furnished Government quarters. In this connection there are many decisions by the Comptroller General holding that when quarters are furnished by the U. S. Government for the officer or employee,

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or his dependents, there may be no payment of rental allowance in connection with the quarters furnished. It has even been held that when quarters are furnished a U. S. officer and dependents by another Government (Canadian) that there is no entitlement to rental allowance. See 21 Comp. Gen. 1065 (1942). This ruling cites Court of Claims decisions which adhere to the same principle, including Byrne v. U. S., 87 C. Cls. 241 (1938), wherein the court stated at page 247:

"... Ever since the case of Henry E. Odell v. United States, 38 C. Cls. 194, 197, 198, it has been held that commutation for quarters is reimbursement to an officer for expenses paid by him for private quarters when the Government is unable to furnish him public quarters; that it is no part of the pay proper of an officer and that, when an officer has his dependents residing in public quarters, he incurs no expense in providing quarters and there is no reimbursement.

"In William M. Irwin v. United States, 38 C. Cls. 87, 103 decided the same time as the Odell case, the court held:

"In the opinion of this court contemporaneously announced herewith in Odell v. United States . . . it is shown that the theory of commutation is compensation or reimbursement for something paid out. The only difference between this case and Odell's is that here one room only was available, whereas Odell found not even one room available but occupied quarters assigned to another officer by the consent and courtesy of the officer first in possession. In both cases the officer claiming commutation was relieved from expense, and neither became entitled to recover from defendants the value of quarters not paid for by the officer. As no expense was incurred, this part of the claim must be denied"

And at page 248:

"... Commutation is for the purpose of compensating an officer for expenses incurred in providing private quarters for himself and his dependents when the Government fails to provide public quarters. On this theory only can recovery be had and, as it appears in this case that the officer has not been put to any expense, no right to reimbursement has been established"

5. As a matter of policy, this Agency considers its responsibilities to be no different from those of the ordinary government agency with respect to normal administrative or operating problems. This policy is set forth in a regulation which among other provisions enjoins the use

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of funds to give employees a benefit in comparison to other Government employees. This is in accordance with the ruling of the Comptroller General directed to this Agency. Thus questions arising in connection with a normal administrative matter such as housing and rental allowance are to be treated in the same manner as in government generally. The fact that other Army officers who did not occupy rent-free government quarters profited thereby due to peculiar local circumstances does not mean that claimant has actually expended money for rental so as to entitle him to reimbursement. In line with this we would also point out that under the Career Compensation Act of 1949 allowance for quarters shall not accrue to members of the uniformed services assigned to adequate government quarters or housing facilities under the jurisdiction of the uniformed services.

6. The claimant here has paid out nothing for quarters nor does he contend that he has. Accordingly, under the prevailing decisions of the Comptroller General and the Court of Claims as indicated above, this claim may not properly be allowed and accordingly is denied.

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